

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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In the Matter of)	
)	Investigation No. 337-TA-365
CERTAIN AUDIBLE)	
ALARM SYSTEMS FOR DIVERS)	
)	

ORDER

The Commission instituted this investigation on May 31, 1994, based upon a complaint filed on April 28, 1994, by David A. Hancock and Ideations Design Inc. ("complainants") alleging that IHK International Group of Torrance, California ("IHK") and Duton Industry Co., Ltd. of Taipei, Taiwan ("Duton") (collectively referred to as "respondents") had violated section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the sale for importation, the importation, and the sale after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 ('107 patent) and claim 1 of U.S. Letters Patent 5,106,236 ('236 patent), both of which patents are owned by Mr. Hancock. 59 Fed. Reg. 29615 (June 8, 1994).

On October 25, 1994, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 23) finding that respondent Duton was in default. The ALJ also issued sanctions in the form of adverse evidentiary findings against Duton. On November 21, 1994, the Commission determined not to review Order No. 23. 59 Fed. Reg. 61342 (November 30, 1994).

On February 2, 1995, the ALJ issued her final ID finding that (1) claim 6 of the '107 patent and claim 1 of the '236 patent are valid and enforceable; (2) there is a domestic industry manufacturing and selling products protected by those two patent claims; (3) respondent IHK has imported products that

infringe claim 6 of the 1107 patent and claim I of the 1236 patent; and (4) respondent Duton has exported to the United States products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent. No petitions for review or agency comments were filed. On March 13, 1995, the Commission determined not to review the ALJ's final ID, and requested written submissions on the issues of remedy, the public interest, and bonding. 60 Fed. Reg. 14960 (March 21, 1995). Submissions on remedy, the public interest, and bonding were received from complainants and the Commission investigative attorney (IA). Subsequently, complainants filed a motion to reopen the record for the Commission to consider newly-discovered evidence regarding the identity of an alleged additional foreign distributor/manufacturer of infringing diver alarms, and the IA filed a response to this motion.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined to grant complainants' motion to reopen the record to admit the newly-discovered evidence. The Commission has also determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing audible alarm devices manufactured and/or imported by or on behalf of Duton or IHK. In addition, the Commission has issued a cease and desist order directed to IHK requiring it to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported audible alarm devices.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) and M do not preclude the issuance of the limited exclusion order and the cease and desist order, and that the bond during the Presidential review period shall be in the amount of 152 percent of the entered value of the articles in question.

Accordingly, the Commission hereby ORDERS THAT --

1. Complainants' motion to reopen the record to admit newly-discovered evidence is granted.
2. Audible alarm devices for divers covered by claim 6 of U.S. Letters Patent 4,950,107 or claim 1 of U.S. Letters Patent 5,106,236, and manufactured and/or imported by or on behalf of IHK International Group of Torrance, California or Duton Industry Co., Ltd. of Taipei, Taiwan, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, are excluded from entry for consumption into the United States for the remaining term of the patents, i.e., until October 12, 2008, except under license of the patent owner or as provided by law.
3. Audible alarm devices for divers manufactured and/or imported by or on behalf of IHK International Group or Duton Industry Co., Ltd., identified in paragraph 1 above, are entitled to entry into the United States under bond in the amount of one hundred fifty-two (152) percent of the entered value of such items pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), from the day after this Order is received by the President, until such time as the President notifies the Commission that he approves or disapproves this action, but no later than 60 days after the date of receipt of this Order by the President.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to audible alarm devices for divers imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the United States Government.
5. The Commission may modify this Order in accordance with the procedure described in section 210.76 of the Commission's Final Rules of Practice and Procedure, 59 Fed. Reg. 39020, 39068 (August 1, 1994).
6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.
7. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued: June 6, 1995